

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RENDELL ROBINSON,

Plaintiff,

- against -

THE CITY OF NEW YORK, ET AL.,

Defendants.

10 Civ. 4608 (JGK)

MEMORANDUM OPINION AND
ORDER

JOHN G. KOELTL, District Judge:

The plaintiff, currently incarcerated at Elmira Correctional Facility, brings this pro se action pursuant to 42 U.S.C. § 1983, alleging, inter alia, that officers of the New York Police Department violated his rights. The plaintiff initially named the City of New York and several police officers as defendants (the "City defendants"), in addition to several individuals not employed by the City of New York.

The Court has received the attached letter from the City defendants urging the Court to dismiss the plaintiff's amended complaint and to close this case.

On February 17, 2011, the City defendants moved to dismiss the complaint in this matter. In response to the motion to dismiss, the plaintiff sought and was granted leave to file an amended complaint. On May 5, 2011, the plaintiff filed an amended complaint. In the amended complaint, the plaintiff did not name any City defendants and named Majed Aljaed, one of the

complaining victims, as the sole defendant in this action. The Court issued an order dated May 17, 2011, which indicated that, if the plaintiff intended to pursue claims against the City defendants, he was to file a second amended complaint within thirty days. The plaintiff did not do so.

By Order dated September 13, 2011, the Court noted that there was no indication that defendant Aljaed had been served with process and directed the plaintiff to show cause why his claims should not be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 4(m), which requires that a defendant be served within 120 days of the filing of a complaint. See Fed. R. Civ. P. 4(m).

By Order dated September 16, 2011, the Court granted the plaintiff leave to file a second amended complaint. The Court ordered that the second amended complaint be filed by December 16, 2011, and indicated that no further extensions would be permitted without an affidavit showing very good cause. The Court also reiterated that defendant Aljaed had still not been served with process and directed that defendant Aljaed be served within 120 days of the filing of a second amended complaint.

The plaintiff has not filed a second amended complaint and has not produced an affidavit showing very good cause for failure to do so by the December 16, 2011 deadline. Because the plaintiff did not name any City defendants in his amended


complaint and failed to file a second amended complaint naming any City defendants despite two opportunities to do so, he has abandoned his claims against the City defendants.

Moreover, the plaintiff has not served defendant Aljaed with process within 120 days of the date the amended complaint was filed, as required by Federal Rule of Civil Procedure 4(m). Nor has the plaintiff filed any second amended complaint which could be served on Aljaed within the 120 day timeline. Accordingly, the plaintiff's claims against defendant Aljaed are **dismissed without prejudice**. See Fed. R. Civ. P. 4(m) (specifying that claims against a defendant must be dismissed without prejudice if that defendant is not served within 120 days of the filing of the complaint).

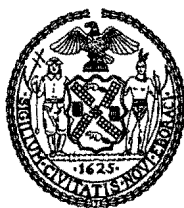
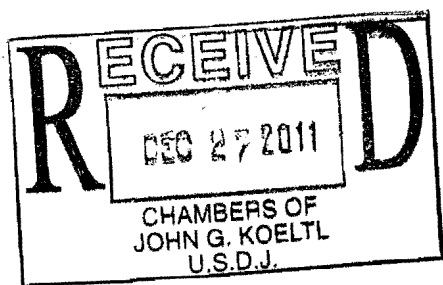
Because defendant Aljaed is the only defendant remaining in this action, the plaintiff's amended complaint is **dismissed** in its entirety. The Clerk is directed to close this case.

SO ORDERED.

Dated: New York, New York
January 6, 2012



John G. Koeltl
United States District Judge



THE CITY OF NEW YORK
LAW DEPARTMENT
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December 23, 2011

BY HAND

Honorable John G. Koeltl
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: Rendell Robinson v. City of New York, et al.
10-cv-4608 (JGK)

Your Honor:

I am an Assistant Corporation Counsel in the Special Federal Litigation Division of the New York City Law Department, and the attorney assigned to the defense of the above-referenced matter. On September 19, 2011, the Court ordered that, "plaintiff's time to file a Second Amended Complaint is extended to December 16, 2011. No further extensions will be permitted without an affidavit showing very good cause." (Court Order, Civil Docket Sheet, Entry No. 46). This office respectfully informs the Court that plaintiff has failed to file a second amended complaint in this matter. Accordingly, unless otherwise instructed by the Court, this office will take no further action in this matter and respectfully request that the Clerk of the Court close this case.

As the Court may recall, on February 17, 2011, City defendants moved to dismiss the complaint in this matter. The motion argued, *inter alia*, that the statute of limitations had expired for most of plaintiff's claims, and that the complaining civilian victims – defendants Majed Aljaed, Abdo Al Jaedi, Badani Al Jaedi – provided probable cause for plaintiff's arrest and prosecution. Rather than oppose the motion, plaintiff asked for leave to amend the complaint. Apparently recognizing that he lacked any valid claims against the City of New York or the police officers who arrested him, plaintiff removed all City defendants when he filed the amended complaint. Indeed, the only defendant named the amended complaint is one of the complaining victims, Majed Aljaed. On May 18, 2011, the Court noted this fact in an order, but nevertheless directed this office, pursuant to Valentin v. Dinkins, 121 F.3d 72 (2d Cir. 1997), to provide plaintiff with addresses at which the United States Marshal may promptly effectuate service on defendants Sutliff, Burns, and Tejada. On June 29, 2011, this office provided plaintiff with proper service addresses for defendants Sutliff, Burns, and Tejada.

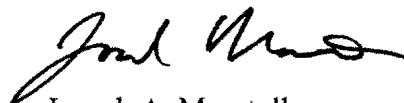
As per the Court's May 18, 2011 order, "[i]f Plaintiff intends to pursue his claims against the City of New York, the New York Police Department and the previously named police officers of the New York Police Department, Plaintiff must thereafter file a Second Amended Complaint naming the City of New York, the New York Police Department, and the individual police officers as Defendants *within thirty (30) days of receiving this information.*" (Court Order, Civil Docket Sheet, Entry No. 42)(emphasis added). Plaintiff did not file a second amended complaint, and this office sought termination of this matter. (City letter, Civil Docket Sheet, Entry No. 43).

On September 14, 2011, the Court ordered plaintiff to show cause why his claims should not be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 4(m), requiring that a defendant be served within 120 days after the plaintiff's complaint is filed. (Court order, Civil Docket Sheet, Entry No. 45). On September 19, 2011, as noted *supra*, the Court ordered that plaintiff file a second amended complaint by December 16, 2011. (Court Order, Civil Docket Sheet, Entry No. 46).

Accordingly, as plaintiff failed to file a second amended complaint naming any City entity or employees, plaintiff has abandoned his claims against the City of New York and any City defendants. Indeed, as more than 120 days has elapsed for plaintiff to serve the civilian witness Majed Aljaed, this office respectfully requests that the Clerk of the Court close this matter and dismiss the amended complaint, with prejudice.

This office thanks the Court for its consideration of this matter.

Respectfully submitted,



Joseph A. Marutollo
Assistant Corporation Counsel
Special Federal Litigation Division

cc: Rendell Robinson, Plaintiff *Pro Se* (By First Class Mail)
07-A-6175,
Elmira Correctional Facility
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